

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GERALD LEE, et al.,	:	
	:	
Plaintiffs,	:	CIVIL NO. 2:17-cv-312
	:	
v.	:	
	:	
GENESIS HOSPITAL, et al.	:	
	:	
Defendants.	:	

NOTICE OF REMOVAL

1. Under 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), the United States of America is removing to this Court a civil action originally filed in the Licking County Court of Common Pleas, by Plaintiffs Gerald Lee and Isabelle Lee. Plaintiffs' Complaint is attached as Exhibit A, and Amended Complaint as Exhibit B.
2. Plaintiffs allege claims of medical malpractice against, Muskingum Valley Health Centers, Inc., Dr. Carl Schowengerdt, and Dr. Roger Ward, among other healthcare providers, due to their failure to meet the standard of care for Plaintiff Gerald Lee, which allegedly led to a delayed diagnosis of lung cancer.
3. Under Section 224(h) of the Public Health Service Act, 42 U.S.C. § 233(h), as amended by the Federally Supported Health Centers Assistance Act, the Department of Health and Human Services first deemed Muskingum Valley Health Centers, Inc. to be an employee of the Public Health Service, under 42 U.S.C. § 233,

on January 1, 2011, and its deemed status has continued without interruption since that date. “Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding.” 42 U.S.C. § 233(g)(1)(F).

3. Defendants Muskingum Valley Health Centers, Inc., Carl Schowengerdt, M.D., and Roger D. Ward, Jr., D.O., as employees of the Health Center, were deemed to be employees of the Public Health Service under 42 U.S.C. § 233 at the time of the alleged incident out of which Plaintiffs’ action against the Health Center and the individual doctors arose.

4. Under 42 U.S.C. § 233(c), 28 U.S.C. § 2679(d), and 28 C.F.R. § 15.4, the United States Attorney for the Southern District of Ohio has certified that the Health Center was acting within the scope of its employment at the time of the alleged incident out of which Plaintiffs’ action against the Health Center arose, and that Dr. Carl Schowendgerdt along with Dr. Roger Ward were acting within their scope of employment as employees of the Health Center at the time of the alleged incident out of which Plaintiffs’ action against the doctors arose. *See* United States Attorney’s Certification of Scope of Employment (attached as Exhibit C). For removal purposes, this certification conclusively establishes scope of office or

employment. *See* 28 U.S.C. § 2679(d)(2).

5. Plaintiffs' exclusive remedy for the claims asserted against the Health Center along with Dr. Schowengerdt and Dr. Ward is an action against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680; *see also* 42 U.S.C. § 233(a), (g). The Federal courts have exclusive jurisdiction over FTCA cases. *See* 28 U.S.C. § 1346(b). Plaintiffs' action has been removed properly to this Court under 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d).

6. A copy of this Notice of Removal will be filed promptly with the Clerk of the Court of Common Pleas in Licking County, which will effect the removal. *See* 28 U.S.C. § 1446(d).

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

s/Mark T. D'Alessandro
MARK T. D'ALESSANDRO (0019877)
Assistant United States Attorney
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-5240
mark.dalessandro@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on April 13, 2017, the foregoing Notice of Removal was presented to the Clerk of the Court for filing and uploading into the CM/ECF system, and I certify that on the same date a copy of the foregoing was sent via Federal Express to the following persons:

David L. Shroyer, Esq.
Colley, Shroyer & Abraham Co., L.P.A
536 South High Street, 2nd Floor
Columbus, OH 43215

Marc W. Groedel, Esq.
Reminger Co. L.P.A.
1400 Midland Building
101 Prospect Avenue, West
Cleveland, OH 44115

Robert B. Graziano, Esq.
FisherBoyles, LLP
2390 Tamiami Trail N., Suite 100
Tampa, FL 34103

Acaia M. Perko, Esq.
Reminger Co. L.P.A
200 Civic Center Drive, Suite 800
Columbus, OH 43215

s/Mark T. D'Alessandro
MARK T. D'ALESSANDRO
Assistant United State Attorney